BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

BARRON HEATING & AIR CONDITIONING, INC.

Employer

and Case 19-RC-14429

SHEET METAL WORKERS, LOCAL 66,
AFFILIATED WITH SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION, AFL-CIO[1]

Petitioner

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned makes the following findings and conclusions:[3]

SUMMARY

The Employer is a heating, ventilation, and air conditioning (HVAC) contractor with offices and facilities located in Bellingham and Burlington, Washington. The Petitioner filed the instant petition essentially[4] seeking a unit of all employees performing sheet metal work in the Employer's commercial, residential, and service departments.[5] The Employer contends that the appropriate unit should be limited to all sheet metal workers employed in the Employer's

[1] The Petitioner's name appears as amended at the hearing.

[2] The Employer filed a timely brief and the Petitioner orally argued at the close of the hearing. The brief and arguments were duly considered.

[3] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

[4] In particular, the Union amended its petition at the hearing to seek a unit including all sheet metal employees in the commercial, service, and residential departments, which includes a journeyman fabricator and an apprentice fabricator, field mechanics (journeymen mechanics, apprentice mechanics and service technicians) in the commercial department, service technicians in the service department and shop and field employees in the residential department; excluding gas pipe installers/employees, clerical employees, guards, managers, and supervisor as defined in the Act.

[5] The commercial department is also referred to as the "building and trades" department in the record.

commercial department because that is the historical bargaining unit covered by the parties' current 8(f) labor agreement and because the Board's decision in *John Deklewa & Sons*, 282 NLRB 1375 (1987), mandates that bargaining history controls with respect to appropriate unit determinations in cases of this nature.[6]

Contrary to the Employer's position, I do not interpret *John Deklewa & Sons*, supra, as mandating that bargaining history is the controlling or conclusive factor with respect to unit determinations in cases of this nature. Rather, I have applied an overall analysis of the community of interest factors, including bargaining history, in making my decision in this case. In this regard, I have decided to direct an election in two units with one unit comprised of all sheet metal employees employed in the Employer's commercial department and a second unit comprised of all sheet metal employees employed in the Employer's residential and service departments.

Below, I have provided a section setting forth the facts, as revealed by the record in this matter and relating to the Employer's operations, bargaining history, and community of interest factors. Following the facts section is my analysis of the applicable legal standards in this case and a section directing an election in the two units.

1.) FACTS

A.) Employer's Operations

As noted above, the Employer is a HVAC contractor and operates facilities located in Bellingham and Burlington, Washington.[7] The Employer also sells and installs wood and gas stoves, fireplaces, spas, and accessories. The Employer's HVAC work is primarily performed in the northwest portion of Washington State. The Employer's total complement of employees is about 95.

The Employer's business operations are functionally divided into six departments: commercial, residential, service, spa, hydronics,[8] and fireplace. The sheet metal employees, whom the Petitioner seeks to represent, are employed in the commercial, residential and service departments.[9]

Bill Pinkey and John Barron own the Employer's operations. Pinkey is the Chief Financial Officer and oversees the commercial department, administrative personnel, and warehouse operations. Barron is the Chief Executive Officer and General Manager and oversees the balance of the Employer's operations including the residential and service departments.

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[6] Alternatively, the Union stated on the record that it was willing to go to an election in any other unit(s) deemed appropriate by the Regional Director. The Employer took no definitive position at the hearing or in its brief with respect to whether the residential or service sheet metal employees were more appropriately included in some other unit or units. Rather, the Employer only asserts that employees in the residential and service departments should be excluded from a commercial department unit.

[7] The Employer maintains a showroom in Burlington for spas and gas and wood stoves. The employees employed at the Burlington showroom are not involved in this proceeding as neither party seeks their inclusion in any unit(s) found to be appropriate in this case. In view of the parties' positions and the record evidence, I shall exclude employees employed at the Burlington showroom from the units that I find appropriate in this case.

[8] The hydronics department oversees the installation of in-floor radiant and baseboard water boiler systems.

[9] Both parties wish to exclude employees working in the spa, hyrdonics and fireplace departments from any unit(s) found appropriate in this case. In view of the parties' positions and the record evidence, I shall exclude employees working in the spa, hydronics, and fireplace departments from the units that I find appropriate in this case.

The commercial department obtains almost all of its work through a bidding process. It employs no sales people. At the time of the hearing, the commercial department employed seven employees, which include a journeyman fabricator and an apprentice fabricator who work in the Employer's Bellingham shop facility, four journeymen field mechanics, one apprentice field mechanic, and two service technicians.

The residential and service departments obtain work through sales employees and dispatch employees.[10] There are 26 residential department employees at issue in this case and they are two residential shop/fabrication employees, twenty residential field installers, and four gas pipe installers.[11]

The service department employs two dispatchers, one clerical,[12] and eight service technicians. The eight service technicians repair and maintain equipment at both commercial and residential locations.

B). Bargaining History

The Employer was formed in approximately 1973 and about that time it signed a master labor agreement with the Petitioner's predecessor labor organization. Apparently, the initial labor agreement covered all sheet metal employees employed by the Employer, regardless of whether those employees were performing commercial, residential, or service work. At some later point in the 1970's, the Employer negotiated a residential addendum, which carved out from the master labor agreement certain terms and conditions applicable to only the sheet metal employees performing residential department work. Later, the Employer negotiated another addendum to carve out certain terms and conditions covering only the sheet metal employees performing service department work. However, the master labor agreements continued to contain the terms and conditions of employment for commercial department employees rather than an addendum.

After agreeing to carve out and cover residential and service sheet metal workers with their respective addendum, the master agreement continued to cover all three groups (commercial, residential, and service) on such subject matters as union security, grievance and arbitration, scope of work, apprenticeship programs and other general items. The master agreement also continued to cover all written terms and conditions of employment for commercial department employees, including their economic package. The addenda generally contained the respective economic packages (wages, benefits, etc.) for the residential and service departments. The addenda also provided specific scope of work descriptions for residential and service department employees, travel criteria, and other limited terms and conditions of work. Over the years, the parties entered into successive master labor agreements, with addenda, and treated the Employer's commercial, residential and service operations as if they fell within the construction industry and Section 8(f) of the Act.

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[10] Neither party seeks to include the salespeople or dispatchers in any unit(s) found appropriate herein. In view of the parties' positions and the record evidence, I shall exclude the salespeople and dispatchers from the units that I find appropriate in this case.

[11] The Petitioner is not seeking to represent the gas pipe installers and the Employer is not contending they should be part of any unit. The Petitioner or its predecessor has not historically represented these gas pipe installers. In view of the parties' positions and the record evidence, I shall exclude the gas pipe installers from the units that I find appropriate in this case.

[12] The Petitioner is not seeking to represent the dispatchers or the service clerical and the Employer does not contend that they should be part of any unit. In view of the parties' positions and the record evidence, I shall exclude the service dispatchers and clerical from the units that I find appropriate in this case.

The parties' practice of negotiating separate addenda for the residential and service sheet metal employees ran until 2000, when the Employer did not renew the addendum for its service employees, thereby effectively ending the Petitioner's representation of the service employees at that time. In a letter dated May 20, 2003, the Employer notified the Petitioner that the Employer would not renew the residential addendum following its expiration on May 31, 2003. Shortly thereafter, the Employer and the Petitioner signed just the master agreement, which covered only the sheet metal employees in the commercial department and which, by its terms, is effective from June 1, 2003 through May 31, 2006. On July 18, 2003, Petitioner filed the instant petition seeking a unit of the Employer's "employees covered by the Collective Bargaining agreement, which expired 5/31/2003." The petition was later amended on September 12 to include all sheet metal employees in the Employer's "building and trades," (commercial), residential, and service departments.

C). Community of Interest Factors

With respect to degree of functional integration between the commercial, residential and service department, the record evidence reveals that the commercial department works on commercial installations or projects, while the residential department works on residential installations or projects. As noted above, there are two service employees in the commercial department who work solely on the installation and tuning of new equipment on commercial projects.

Regarding supervision of employees, the record discloses that the commercial department is supervised by two project managers, Don Inman and Leroy Mans who in turn report to CFO Bill Pinkey (co-owner). Inman and Mans do all the bidding for commercial projects and manage any successful bid work. George Mosier and Bryan Mattson supervise the service and residential departments, respectively. Mosier and Mattson report directly to CEO and general manager John Barron (co-owner).[13]

With respect to interchange, the record reveals that, about two years ago (the only time in the past five years), four residential employees became qualified as commercial journeymen. However, only two of these four employees transferred into the commercial department while the other two continue to work in the residential department. Only under limited conditions and rare instances (e.g., emergencies) will commercial department employees work on residential projects and will residential department employees work on commercial projects. In terms of contact between residential and commercial department employees, they may have occasional contact when both groups of employees happen to be working in the Employer's Bellingham shop.[14] On the other hand, service department employees perform service and maintenance on residential and commercial installations but only following the completion of installation work by the commercial and residential department employees.

[13] The parties stipulated that Inman, Mans, Mosier and Mattson possess indicia of supervisory authority (i.e., the authority to hire and fire employees) within the meaning of Section 2(11) of the Act. Thus, neither party asserts that these four supervisors should be included in any unit(s) found appropriate herein. Accordingly, I shall exclude Inman, Mans, Mosier and Mattson from the units due to their supervisory status.

[14] The shop fabricators for both residential and commercial departments work in the Employer's Bellingham facility but, beyond that, the parties did not elaborate on the nature and extent of possible contact between these two groups of employees. Moreover, the parties did not elaborate on the nature and extent of contact between field employees in the residential and commercial departments when in the shop together. However, it appears that the commercial field employees are in the shop more often due to the more complex nature of their work while the residential field employees generally work with pre-fabricated materials or systems and, thus, need less time in the shop.

Regarding working situs, it was noted above that residential and commercial department employees work at separate types (residential versus commercial) of projects. However, service department employees work at both commercial and residential projects.

With respect to the nature of employee skills and functions, the record evidence reveals that the skills and functions associated with work performed on commercial projects differs substantially from the work performed on residential projects. Accordingly, the Employer has departmentalized its operations due to this difference and only assigns commercial department employees to commercial work and residential department employees to residential work.[15] Moreover, certain service work - installation and tuning - is handled on commercial jobs exclusively by the two service technicians working in the commercial department. The balance of all other service and maintenance work, whether commercial or residential in nature, is performed by the service department employees.

The commercial department employees are hired exclusively through the Petitioner's hiring hall and must, at a minimum, possess extensive qualifications to work on the Employer's commercial projects, which involve significantly more complex work. In particular, commercial department employees are experienced journeymen who have gone through a 5-year State approved apprenticeship/training program or have 10 years of industry experience and have successfully completed an examination administered by an industry Joint Examining Committee.[16]

While the Petitioner provides commercial department employees to the Employer via a hiring hall arrangement, the residential and service employees are hired in a totally different manner. The Employer typically hires residential and service department employees "off the street" through various means. Regarding residential department prospective employees, they can have extensive experience or have none prior to their hiring. In the latter case, new residential department hires are subject to on-the-job training. This initial on-the-job training may be accomplished in as little as a month to qualify an individual for an independent installation. Service department employees generally have some outside training in a technical school setting.[17]

With respect to other conditions of employment, the record reveals that commercial department employees are subject to the vagaries of new construction, which means that the staffing level can vary from one journeyman and one apprentice to six journeymen and two apprentices. However, the residential and service departments have relatively steady employment with little or no fluctuation in employment.

With respect to wages and benefits, the record reveals that, prior to the 2003 - 2006 master labor agreement, the economic package (wages and benefits) for a commercial department journeyman, including the two service technicians, was over double the package provided to residential department employees. Service department employees had also received a lower economic package relative to commercial department employees until recently when, prior to the current master agreement, the service department technicians' package was

[15] Commercial employees can do residential work when commercial work is slow, but only if they agree in writing. It appears that this is not a frequent occurrence.

[16] The parties did not specify whether record evidence concerning the hiring hall referrals and extensive work qualifications was equally applicable to the two service technicians employed in the commercial department. However, it appears from the master labor agreements that such evidence was equally applicable to the commercial department service technicians.

[17] While the record does not provide details as to the training in the technical school setting, it appears the training lasts between one and two years.

raised over a 3-year period to a level nearing the package of commercial department employees.

2). Legal Analysis

There is nothing in the Act which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be "appropriate," that is, appropriate to insure to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." *Bartlett Collins Co.*, 334 NLRB No. 76 (2001); *Overnite Transportation Co.,* 322 NLRB 723 (1996). A major determinant in an appropriate unit finding is the community of duties and interests of the employees involved. When the interests of one group of employees are dissimilar from those of another group, a single unit is inappropriate. *Swift & Co.*, 129 NLRB 1391 (1961). See also *United States Steel Corp.*, 192 NLRB 58 (1971). But the fact that two or more groups of employees engage in different processes does not by itself render a combined unit inappropriate if there is a sufficient community of interest among all these employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963).

Many considerations enter into a finding of community of interest. See, e.g., *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163 (3d Cir. 1986). The factors affecting the ultimate unit determination may be found in the following sampling: 1.) degree of functional integration;[18] 2.) common supervision;[19] 3.) the nature of employee skills and functions;[20] 4.) interchangeability and contact among employees;[21] 5.) work situs;[22] 6.) general working conditions;[23] and 7.) fringe benefits.[24]

In this case, the Employer argues that the following language from the Board's decision in *John Deklewa &* Sons, 282 NLRB 1375, 1377 (1987), is dispositive of the standard or factor to be applied for determining the appropriate unit when a petition is filed during the term of a Section 8(f) contract:

> [S]uch agreements [8f] will not bar the processing of valid petitions filed pursuant to Section 9(c) and Section 9(e) … in processing such petitions, the appropriate unit normally will be the single employer's employees covered by the agreement…

Relying on the Board's holding in *John Deklewa & Sons,* the Employer argues that the scope of the petitioned-for unit must be the same as that in the current 8(f) agreement between the Petitioner and the Employer. Only commercial department employees are covered by the

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[18] *Seaboard Marine Ltd.,* 327 NLRB 556 (1999); and *Transerv Systems*, 311 NLRB 766 (1993).

[19] *Harron Communications*, 308 NLRB 62 (1992) and, supra; *Sears, Roebuck & Co.*, 319 NLRB 607 (1995).

[20] *Overnite Transportation Co.*, 331 NLRB No. 85 (2000) (all unskilled employees at particular location); *J. C. Penney Co.,* 328 NLRB 766 (1999); *Harron Communications*, supra; *Downingtown Paper Co.*, 192 NLRB 310 (1971); *Phoenician,* 308 NLRB 826 (1992).

[21] *J. C. Penney*, supra; *Associated Milk Producers*, supra; *Purity Supreme, Inc.*, 197 NLRB 915 (1972); *Gray Drug Stores*, 197 NLRB 924 (1972); *Michigan Bell Telephone Co.*, 192 NLRB 1212 (1971).

[22] *R-N Market*, supra; *Bank of America*, 196 NLRB 591 (1972); *Kendall Co.,* 184 NLRB 847 (1970).

[23] *Allied Gear & Machine Co.*, 250 NLRB 679 (1980); *Sears, Roebuck & Co.*, supra; *Yale University*, 184 NLRB 860 (1970). See also *K.G. Knitting Mills*, 320 NLRB 374 (1995), where the Board held that the fact that employees receive a salary, do not punch time clocks, receive different health insurance benefits from other unit employees, and are able to adjust their own hours was not an adequate basis for exclusion from the unit.

[24] *Allied Gear & Machine Co.*, supra; *Donald Carroll Metals*, supra; *Cheney Bigelow Wire Works*, 197 NLRB 1279 (1972).

parties' current labor agreement. Thus, the Employer argues that residential and service employees must be excluded from the unit sought by Petitioner. The Employer does not take a position on the residential and service employees if I were to agree with the Employer's arguments to exclude those employees from a unit of commercial department employees. Regardless, I do not agree with the Employer's reading of *John Deklewa & Sons*. Rather, I find that the Employer's arguments were clearly rejected by the Board in *Alley Drywall, Inc*., 333 NLRB 1005, 1007. *Alley Drywall, Inc*., involved an employer, engaged in the construction industry, which was arguing that its history of bargaining as reflected in its 8(f) agreements with the petitioner, was controlling with regard to the petitioner's efforts to process a petition seeking a larger unit. There, the Board denied the employer's request for review where bargaining history was attributed substantial but not controlling or conclusive weight. Rather, bargaining history was considered in connection with other relevant and material community of interest factors which bear on appropriate unit determinations.

In light of this precedent, I must analyze the instant case by applying a community of interest analysis, which examines a number of factors including the parties' bargaining history. With respect to bargaining history, Petitioner or its predecessor represented all sheet metal employees in the Employer's commercial, residential and service departments for a period of 20 to 30 years up to 2000 when service department employees were carved out. Moreover, Petitioner continued to represent employees in both the residential and commercial departments through May 31, 2003, when the Employer refused to renew the residential addendum.[25] Thus, the parties' bargaining history does not clearly support the Employer's position on an appropriate unit determination in this case. Rather, the parties' bargaining history, at the very least, is unsettled in this regard. Clearly, further examination of other community of interest factors is warranted.

The factor of functional integration reveals that the residential department operations are separate and apart from the commercial department, as evidenced by the way the Employer has organized its business operations. However, the service department appears to be functionally integrated with both the commercial and residential departments as the service department follows the other two departments in performing service and maintenance on commercial and residential projects.

With respect to supervision, although three departments have separate immediate supervision, residential and service share the same line of supervision and management above the immediate supervisory level while the commercial department's line of supervision and management appears entirely different.

Regarding interchange and contact, the record reveals very little of either with the exception of contact between the fabricators from the residential and commercial departments who work in the Bellingham shop. However, beyond working in the same shop, the record does not detail the nature and extent of any such contact between these fabricators.

In terms of work situs, the record reveals that the bulk of the employees in the commercial and residential departments typically work different jobsites and, in the case of the service department employees, work the same sites as the other two departments but at different times.

Examining the factor of the nature of employee skills and functions, the record reveals that skills required of commercial, residential and service differ significantly. In particular, the

[25] I further note that Petitioner responded to the Employer's effort to carve out the residential department employees by filing the instant petition on July 18, 2003, and seeking an election in a unit covered by the parties' labor agreement, which expired on May 31, 2003.

skills required of commercial department employees are much greater than those for the residential and service employees, as indicated by the longer time frame involved in obtaining the requisite commercial skills and/or experience. Here, residential and service department employees share similarities in that they need not possess extensive training, experience and/or certification to warrant consideration for hire. On the other hand, commercial employees receive their training through a State approved 5-year apprenticeship program or through 10 years of experience in the industry followed by the successful completion of an examination.

In terms of other conditions of employment, commercial department employees differ in significant respects with regard to the manner in which they are hired (via a hiring hall) as opposed to the manner (off the street) in which residential and service employees are hired. Additionally, employment for the commercial employees fluctuates greatly relative to the stable employment for the residential and service employees.

With respect to wages and benefits, commercial employees receive about twice what residential employees are paid due to the difference in the complexity of work performed by the two groups of employees. While service employees' economic package had been elevated over the years, they too fall short of what commercial department employees are provided.

Thus, an examination of the community of interest factors reveals that commercial department employees lack functional integration, common supervision, common skills and functions, significant interchange and contact, common work situs(i), common general working conditions and similar wages and benefits with residential department employees. The same holds true when viewing commercial department and service department employees. In particular, those two groups lack common supervision, common skills and functions, significant interchange/contact, common general working conditions, and equivalent wages and benefits. In view of the above and the record as a whole, an insufficient basis exists to warrant including residential and service department employees in a unit composed of commercial department employees. I shall, therefore, direct in an election in a unit composed of only the commercial department employees.[26]

The next issue to address concerns whether to direct an election in a unit or in units covering the residential and service departments. On this issue, the Employer does not take a position and the Union generally took the position that it was willing to proceed to an election covering the employees it seeks to represent in any alternative unit or units that I find appropriate.

Based on the record evidence, I find that a unit composed of residential and service department employees, with the exclusions noted above and below, constitutes an appropriate unit in which to direct an election. I base this finding on an analysis of the community of interests shared by the residential and service employees. In particular, they are functionally integrated in that the service department employees maintain and service the installations of the residential department; they share common supervision above the immediate level and are functionally organized to fall under the same management; both work on similar projects; they are hired in the same fashion (i.e., not via a hiring hall but off the street); they do not need extensive training, experience and/or certification prior to hire; and they share relatively stable employment by the Employer and, unlike commercial department employees, are not subject to referral to other employers in the event of a layoff. Moreover, there was a relatively long period

[26] I include the two commercial service employees in the commercial department and not the service department. These two work solely on installation and tuning of new commercial equipment; they are supervised by the commercial department supervisors and have little if any interaction with non-commercial employees. Moreover, they are compensated at the same level as the commercial employees.

of time (20 to 30 years up until 2000) during which the residential and service department employees were jointly represented by the Petitioner or by its predecessor. In view of the foregoing and in view of the Employer's lack of stated opposition to such, I shall direct an election in a unit composed of the Employer's employees working in the residential and service departments, with the exclusions noted above and below.

In light of the above, the record evidence, and the parties' arguments at hearing and on brief, I shall direct an election in the following two units of employees:

UNIT A

All sheet metal employees employed by the Employer in the commercial/building trades department, including journeymen and apprentice fabricators, journeymen and apprentice field mechanics, and commercial service technicians; excluding residential department employees, service department employees, spa department employees, hydronics department employees, fireplace department employees, Burlington showroom employees, salespeople, dispatchers, clerical employees, managers, guards and supervisors as defined in the Act.

There are currently seven employees in Unit A.

UNIT B

All sheet metal workers employed by the Employer in the residential and service departments including residential shop fabricators, residential field installers, service department technicians; excluding gas pipe installers, salespeople, dispatchers, commercial department employees, spa department employees, hyrdonics department employees, fireplace department employees, Burlington showroom employees, clerical employees, managers, guards and supervisors as defined in the Act.

There are approximately 30 employees in Unit B.

3.) DIRECTION OF ELECTION

A.) Unit A

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit A found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in Unit A who were employed in Unit A during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees in Unit A who have been employed for 30 days or more within the 12 months preceding the eligibility date for the election, or those who have had some employment in those 12 months and have been employed for 45 days or more within the 24-month period immediately preceding the eligibility date, and who have not been terminated for cause or quit voluntarily prior to completion of the last job for which they were employed. The foregoing only applies to employees in Unit A.[27] Also eligible are employees engaged in any economic strike,

[27] As I indicated above, the commercial department engages in new construction and has varying levels of employment and, thus, warrants the application of the Board's *Daniel* voter eligibility formula.[27] The Employer does not oppose the application of the *Daniel* formula to the commercial department unit but, again, does not take a position on a voter eligibility formula for residential and service departments employees. The Union did not take any position on the issue of voter eligibility. Regardless, the record

who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Sheet Metal Workers, Local 66, affiliated with Sheet Metal Workers International Association, AFL-CIO.

B.) Unit B

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit B found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in Unit B who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Sheet Metal Workers, Local 66, affiliated with Sheet Metal Workers International Association, AFL-CIO.

C.) LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that **a separate election eligibility list for Unit A and Unit B**, containing the alphabetized full names and addresses of all the eligible voters, must be

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evidence indicates that the residential and service departments perform significant work in non-construction industry or existing residential settings. Moreover, the Employer's workforce in the residential and service departments has been stable over the years. As the Board noted in *Steiny and Company, Inc*., supra, the *Daniel* formula does not affect core employees who would be eligible to vote under traditional standards. Under these circumstances, I find that the *Daniel* formula is not applicable to the core employees who make up Unit B. Accordingly, I shall apply the Board's standard voter eligibility formula to the residential and service departments unit.

filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the lists available to all parties to the election.

In order to be timely filed, such lists must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before November 12, 2003. No extension of time to file these lists may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such lists. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by facsimile transmission to (206) 220-6305. Since the lists are to be made available to all parties to the election, please furnish a total of 4 copies, unless the lists are submitted by facsimile, in which case only one copy need be submitted.

D.) NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

E.) RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by November 19, 2003.

DATED at Seattle, Washington, this 5th day of November 2003.

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Richard Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

420-1209
440-1760